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U.S. Government's Initial Intervention at  
Working Group Negotiations on a Draft  
Forced Disappearances Convention  
(January 6, 2003)

The United States delegation takes great pleasure Mr. Chairman, in warmly congratulating you on your assumption of the chairmanship of this working group, for all of the reasons that have already been mentioned.

The United States deplores forced disappearances and regards them as a serious violation of human rights and fundamental freedoms, which, as others have correctly pointed out, result in several associated violations of human rights guarantees. These include, for instance, deprivation of the right to liberty and security of the person, the right against arbitrary arrest or detention, and the rights to due process and a fair trial, just to mention a few. Moreover, too often, forced disappearances lead to some of the gravest violations, such as torture and deprivation of the right to life.

So there should be no mistake that the U.S. harbors no toleration for the despicable collection of violations associated with the phenomenon of "forced disappearance."

Nonetheless, the U.S. finds itself in agreement with several delegations that have suggested in various ways that the Working Group has much work ahead of it in order to elaborate a document that could attract widespread acceptance within the international community.

First, for example, reaching consensus on a legal definition of "forced disappearance" that would be precise and not prohibit legitimate law enforcement and military activities presents a daunting challenge for the Working Group. While we recognize the effort invested in the 1998 Sub-Commission draft on forced disappearances, we believe that its definitional section is in several respects far too broad to be workable in the practical sense of defining and penalizing a crime. As we will point out along the way, the draft text contains other deficiencies which will require close scrutiny and revision. In this regard, we believe that the Working Group should make a virtue of precision in our negotiations.

Second, whatever draft instrument results from this process should be compatible with internationally accepted standards and guarantees, such as those contained in the ICCPR.

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Third, we believe the proposed convention should be carefully crafted to target forced disappearances without capturing collateral issues and bodies of law. For example, we believe that existing international humanitarian law should continue to govern and resolve issues arising from armed conflict.

A fourth concern is that, in our view, a convention should place its greatest emphasis on strengthening national laws and law enforcement practices, which is where the problem of forced disappearances is typically confronted.

Fifth, we would not support the creation of a new treaty body to oversee compliance with a new convention. We oppose duplication of the work and the capabilities of existing treaty bodies, and would wish to avoid additional costs and efforts associated with such duplication. For instance, several delegations have made the interesting proposal that we frame this instrument as an optional protocol to the ICCPR. An advantage of so doing may be that the Human Rights Committee could serve as the monitoring mechanism.

A sixth concern relates to provisions that would clearly, from the outset, impede consensus, such as a no-reservations provision and certain other provisions contained in the 1998 draft.

These comments represent some of our initial thoughts. Others will likely be raised in the course of the Working Group's deliberations. We look forward to actively participating in the work of this body.

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